

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY

Application for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Illinois Public Utilities Act, to Construct, Operate, and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois

Docket 13-0657

**MOTION TO STRIKE PORTIONS OF TESTIMONY AS VIOLATIVE OF
ALJS' RULING OF MAY 28, 2014**

Intervenors William Lenschow, Thomas Pienkowski, Kristine Pienkowski, John Tomaszewicz, Jerry Drexler, Kristin Drexler, Robert Mason, Diane Mason, and Ellen Roberts Vogel (together, "SKP Group"), pursuant to the Notice of Administrative Law Judges' ("ALJs") Ruling (May 28, 2014) and Section 200.190 of the Rules of Practice of this Commission, 83 Ill. Admin. Code §200.190, move this Commission to strike portions of the direct testimony upon reopening of various intervenors ("Motion to Strike"). In support of its Motion to Strike, SKP Group states as follows:

1. After it became aware of Commonwealth Edison Company's ("ComEd"), non-jurisdictional, notice-related, mistake as to a very limited number of properties,¹ this Commission took the extraordinary step of re-opening the record, inviting additional testimony, and extending the statutory deadline for its Order. Notice of Admin. Law Judges' Ruling, p.1 (May 28, 2014). When it did so, the Commission set out a detailed procedural schedule by which it expressly, clearly, and appropriately limited the scope of any direct testimony upon reopening. Under that Ruling, those individuals who had received individual prior notice of the proceeding were limited in

¹ None of said properties appears to be property of Polz, Schramm, or Smith. *Infra*.

their testimony regarding notice. *Id.* Only those who did not receive notice could comment on other issues, such as routing. *Id.* In the section of said Ruling setting the ground rules for the permissible scope of testimony upon reopening, the ALJs specifically stated, “All parties can file direct testimony on reopening regarding notice; parties not previously receiving individual notice can file such testimony on any issue.” *Id.*

2. The record reflects that Timothy Polz, Sandra Smith, and Thomas Schramm received notice of these proceedings in December 2013. See Verified Petition, Exh. D (December 2, 2013) (select pages therefrom are attached hereto as Exh. A). Moreover, Mr. Polz simply cannot legitimately point to a lack of notice; he actually attended a hearing. See, Tr., 8:6-9. Similarly, Ms. Smith has explicitly stated that she received notice of these proceedings on December 23, 2013. Direct Testimony of Sandra Smith, Smith Ex. 1.00, ll. 23-25.

3. Mr. Polz, Mr. Schramm, and Ms. Smith failed to challenge the ALJs’ Ruling limiting their testimony, let alone seek its reconsideration. Instead, they simply violated it. Given the posture of this case, and the extraordinary relief offered to them, it is not unreasonable or unjust to expect and require Mr. Polz, Mr. Schramm, and Ms. Smith to abide by the ALJs’ clear, unambiguous ruling, including the stated restrictions on the scope of testimony.

4. Mr. Polz, Mr. Schramm, and Ms. Smith have filed direct testimony that includes testimony on matters clearly outside the bounds of the ALJs’ Ruling on scope. As noted above, none of said witnesses has requested an expansion of, or exemption from, the permissible scope of testimony upon reopening which the ALJs established. Accordingly, the portions of testimony that do not relate to the notice received should be stricken from the record, including:

- a. Direct Testimony of Timothy Polz, ll. 25-63;
- b. Direct Testimony of Thomas Schramm, Schramm Ex. 1.00, ll. 13-62; Schramm Exh. 1.01; and

- c. Direct Testimony of Sandra Smith, Smith Ex. 1.00, ll. 26-50 (starting with, “I first learned of the Kenyon/Deutsch Alternate Route”)

5. The SKP Group will be greatly prejudiced if this improper testimony is allowed in the record. Those SKP Group members who would be adversely affected by ComEd’s proposed routes provided evidence of those routes’ effects and superior routes for consideration. Now, if this out-of-scope, improper testimony is allowed to stand, those SKP Group members will, unfairly, have to repeat the process of developing and filing prepared testimony, possibly engaging their expert witness to refute the unsupported factual conclusions of the new intervenors, participate in another hearing, and pay for additional attorney time and expenses associated with these activities. Such prejudice would be greatly limited if the new intervenors simply obeyed the Ruling of the ALJs and limited the subject of their testimony to notice.

6. Any prejudice purportedly suffered by Mr. Polz, Mr. Schramm, and Ms. Smith as a result of striking improper testimony falls squarely upon their own shoulders. That is, they had notice of these proceedings, and rather than stay abreast of the docket, they chose to ignore its development. To allow such behavior sets a very dangerous precedent wherein any transmission line docket will, essentially, lack enforceable procedural schedules and finality as to the closing of evidentiary records.

7. Moreover, such purported prejudice could have been easily prevented. For example, in this very docket, after receiving notice of these proceedings, Ellen Roberts Vogel intervened on February 14, 2014. Because her land was not, at the time, impacted by any proposed routes, Ms. Vogel did not actively participate in the case, but did carefully monitor the docket. At the moment that the Forest Preserve District of Kane County performed an about-face on allowing transmission lines on its property, thereby placing Ms. Vogel’s property potentially at risk, Ms. Vogel appropriately and timely submitted cross-rebuttal testimony and otherwise

defended her position. *See, e.g., Vogel Cross-Rebuttal., Exh. 1.0 (April 7, 2014).* The notice served its purpose, and Ms. Vogel did not sit on her rights and ignore the docket. *See also, generally, In re Ill. Power Co. d/b/a Ameren IP & Ameren Ill. Transmission Co., Docket 06-0706,* (wherein landowner members of the SHOCK Group, despite not being initially affected by the utility's proposed routing, nevertheless intervened, monitored the docket, and defended the position of its members upon the proposal of another intervenor to alter the routes in a way that would have impacted SHOCK's members). Nothing prevented any of the persons submitting direct testimony upon reopening from exercising prudence and submitting testimony when it could, and should, have been submitted. It is unreasonable and unfair to once again re-set the rules to allow testimony that is clearly and plainly beyond the scope of, and therefore in violation of, the ALJ's May 28 Ruling.

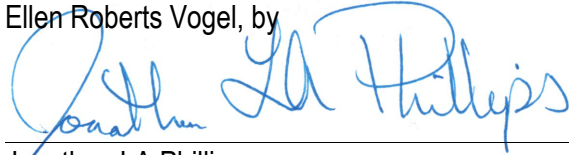
WHEREFORE, for reasons contained herein, the SKP Group respectfully requests that the testimony of certain intervenors be stricken as follows:

- a. Direct Testimony of Timothy Polz, Il. 25-63;
- b. Direct Testimony of Thomas Schramm, Schramm Ex. 1.00, Il. 13-62; Schramm Exh. 1.01; and
- c. Direct Testimony of Sandra Smith, Smith Ex. 1.00, Il. 26-50 (starting with, "I first learned. . . .")

June 19, 2014

Respectfully submitted,

William Lenschow, Thomas Pienkowski, Kristine Pienkowski, John Tomasiewicz, Jerry Drexler, Kristin Drexler, Robert Mason, Diane Mason, and Ellen Roberts Vogel, by



Jonathan LA Phillips

William M. Shay

Their attorneys

Shay Kepple Phillips, Ltd.

456 Fulton St., Suite 255

Peoria, IL 61602

wshay@skplawyers.com

jphillips@skplawyers.com

309.494.6155

EXHIBIT D

**List of Land Owners Who May Have an Interest in Land Upon, Across, or Adjacent to
Which the Proposed Transmission Line Will be Built, Based on County Tax Records**

TERRENCE J & KAREN S MEYERS
COUNTY TAX ID NO: 06-33-331-001
1681 MONTCLAIR DR
ELGIN IL 60123

TERRY & JOANNE YAKES
COUNTY TAX ID NO: 09-03-176-044
7 LOCUST CT
SOUTH ELGIN IL 60177

THERON W & PAMELA S REAL
COUNTY TAX ID NO: 05-22-200-030
10N750 MUIRHEAD RD
ELGIN IL 60123

THOMAS PIENKOWSKI
COUNTY TAX ID NO: 04-09-400-017
12N393 WAUGHON RD
HAMPSHIRE IL 60140

THOMAS & DEBRA STYCZYKOWSKI
COUNTY TAX ID NO: 05-08-300-001
43W919 BAHR RD
HAMPSHIRE IL 60140

THOMAS & JILL SWIERCZEWSKI
COUNTY TAX ID NO: 09-02-160-009
19 S CONWAY CT
SOUTH ELGIN IL 60177

THOMAS C & KRISTINE L PIENKOWSKI
COUNTY TAX ID NO: 04-09-400-001
12N393 WAUGHON RD
HAMPSHIRE IL 60140

THOMAS C & KRISTINE L PIENKOWSKI
COUNTY TAX ID NO: 04-09-400-016
12N393 WAUGHON RD
HAMPSHIRE IL 60140

THOMAS E & ELISE M NODURFT
COUNTY TAX ID NO: 05-23-327-004
10N391 PRAIRIE XING
ELGIN IL 60123

THOMAS H & ARLETTA K MILLER
TRUSTEES
COUNTY TAX ID NO: 06-32-153-002
37W801 HOPPS RD
ELGIN IL 60123

THOMAS P & DAWN K TECZA
COUNTY TAX ID NO: 05-23-326-002
40W750 WILD BRIAR LN
ELGIN IL 60123

THOMAS W & GABRIELA BARKER
COUNTY TAX ID NO: 09-03-281-012
585 S HAVERHILL LN
SOUTH ELGIN IL 60177

TIMOTHY & ANJANETTE LUALLEN
COUNTY TAX ID NO: 05-26-226-003
9N950 HEATHERINGTON PL
ELGIN IL 60124

TIMOTHY & CHRISTINE POLZ
COUNTY TAX ID NO: 04-15-100-028
1616 W MONTROSE AVE 2H
CHICAGO IL 60613

TIMOTHY & PATRICIA VANACKER
COUNTY TAX ID NO: 04-11-300-012
11N983 BURLINGTON RD
HAMPSHIRE IL 60140

TIMOTHY & PATRICIA VANACKER
COUNTY TAX ID NO: 04-14-100-016
11N983 BURLINGTON RD
HAMPSHIRE IL 60140

TIMOTHY ALLEN HEINKING
YORK JESSICA
COUNTY TAX ID NO: 05-17-200-009
11N677 IL ROUTE 47
HAMPSHIRE IL 60140

TODD & NANCY THORREZ
COUNTY TAX ID NO: 09-03-176-054
15 LILAC CT
SOUTH ELGIN IL 60177

TOLL IL LP
COUNTY TAX ID NO: 05-25-426-001
630 N NORTH CT STE 180
PALATINE IL 60067

TOLL IL LP
COUNTY TAX ID NO: 05-25-427-002
630 N NORTH CT STE 180
PALATINE IL 60067

TOLL IL LP
COUNTY TAX ID NO: 05-25-428-001
1035 E WOODFIELD RD
SCHAUMBURG IL 60173

TOLL IL LP
COUNTY TAX ID NO: 05-25-402-046
630 N NORTH CT STE 180
PALATINE IL 60067

TOLL IL LP
COUNTY TAX ID NO: 05-25-404-004
630 N NORTH CT STE 180
PALATINE IL 60067

TRACY C DRING
COUNTY TAX ID NO: 06-33-375-067
2558 HATFIELD CT
ELGIN IL 60123

TRADITIONS AT FITCHIE CREEK LLC
C/O NEW VISTA INVESTMENT GROUP LLC
COUNTY TAX ID NO: 06-30-400-017
10 S LA SALLE ST STE 1050
CHICAGO IL 60603

TRUST #1280606504
C/O NATIONAL BANK & TR CO, SYCAMORE
TRUSTEE
COUNTY TAX ID NO: 09-02-477-013
230 W MAIN ST
SYCAMORE IL 60178

TRUST #1280606504
C/O PETER & IRMA ORUM
COUNTY TAX ID NO: 09-02-426-010
PO BOX 384
SAINT CHARLES IL 60174

TRUST #1280606504
C/O PETER & IRMA ORUM
COUNTY TAX ID NO: 09-02-451-036
PO BOX 384
SAINT CHARLES IL 60174

TRUST #1280606504
C/O PETER & IRMA ORUM
COUNTY TAX ID NO: 09-02-477-012
PO BOX 384
SAINT CHARLES IL 60174

VICTORIA N TRUST SANKO-PERUCCO
TRUSTEE
COUNTY TAX ID NO: 05-23-327-005
40W638 PRAIRIE XING
ELGIN IL 60124

ICC Docket No. 13-XXXX
ComEd Ex. D

SANFORD TRUSTEE SWANSON TRUSTEE
COUNTY TAX ID NO: 10-13-100-003
4549 MERDIAN RD
STILLMAN VALLEY IL 61084

STEEES PAMELA G ZELL
COUNTY TAX ID NO: 11-30-100-001
516 N OTTAWA AVE
DIXON IL 61021

SWANSON CARL CHUCK TRUSTEE
SWANSON
COUNTY TAX ID NO: 11-28-400-009
3555 7TH AVE
STERLING IL 61081

THOMAS & MELANIE LICHTY TRUSTEE
COUNTY TAX ID NO: 12-30-400-022
PO BOX 36
MONROE CENTER IL 61052

THOMAS & MELANIE LICHTY TRUSTEES
COUNTY TAX ID NO: 12-30-400-023
PO BOX 36
MONROE CENTER IL 61052

TODD B POWELSON
COUNTY TAX ID NO: 11-25-400-009
6634 WOODRIVER
NILES IL 60714

VITKUS MARGARET E TRUSTEE HALL
COUNTY TAX ID NO: 12-26-400-003
1382 PROSSER DR
SYCAMORE IL 60178

VITKUS MARGARET E TRUSTEE HALL
COUNTY TAX ID NO: 12-25-300-002
1382 PROSSER DR
SYCAMORE IL 60178

WESLEY A & KATHRYN L BURANDT
COUNTY TAX ID NO: 11-28-300-008
3890 BAXTER RD
ROCKFORD IL 61109

WESLEY E & FRANCES E LEWIS
COUNTY TAX ID NO: 10-15-200-023
5914 N STILLMAN VALLEY RD
STILLMAN VALLEY IL 61084

WILLIAM E & CATHERINE J WILLIAMS
TRUSTEES
COUNTY TAX ID NO: 11-30-200-008
4304 N ARMOUR RD
STILLMAN VALLEY IL 61084

A L ANDERSON
COUNTY TAX ID NO: 0509400002
27707 GLIDDEN RD
CLARE IL 60111

A L ANDERSON
COUNTY TAX ID NO: 0516200001
27707 GLIDDEN RD
CLARE IL 60111

ALAN G & GAYLE A VOLPP
COUNTY TAX ID NO: 0610400019
9N728 PELOW RD
HAMPSHIRE IL 60140

BABSON FARMS CO
C/O GUSTAVUS H BABSON
COUNTY TAX ID NO: 0512400001
PO BOX 596
MORRIS IL 60450

BABSON FARMS CO
C/O GUSTAVUS H BABSON
COUNTY TAX ID NO: 0513200001
PO BOX 596
MORRIS IL 60450

BEATRICE L BUE
COUNTY TAX ID NO: 0617100001
2944 GREENWOOD ACRES DR
DEKALB IL 60115

BEATRICE L BUE
COUNTY TAX ID NO: 0617200012
2944 GREENWOOD ACRES DR
DEKALB IL 60115

BEATRICE L BUE
COUNTY TAX ID NO: 0618200010
2944 GREENWOOD ACRES DR
DEKALB IL 60115

BUSEY TRUST CO
COUNTY TAX ID NO: 0129300008
2020 ABERDEEN CT
SYCAMORE IL 60178

CAROLYN SUTORIS
COUNTY TAX ID NO: 0608300002
4724 W BRYN MAWR AVE
CHICAGO IL 60646

CHARLES E WOOD
COUNTY TAX ID NO: 0231100003
638 STONEHAVEN AVE
ELK GROVE VILLAGE IL 60007

CHARLES E & SANDRA K SMITH
COUNTY TAX ID NO: 0613200005
46W118 PLANK RD
HAMPSHIRE IL 60140

COMMONWEALTH EDISON CO
ATTN: FRED SCHWER
COUNTY TAX ID NO: 0608300001
3 LINCOLN CENTER
OAKBROOK TERRACE IL 60181

COMMONWEALTH EDISON CO
ATTN: FRED SCHWER
COUNTY TAX ID NO: 0610200017
3 LINCOLN CENTER
OAKBROOK TERRACE IL 60181

COMMONWEALTH EDISON CO
ATTN: FRED SCHWER
COUNTY TAX ID NO: 0610200023
3 LINCOLN CENTER
OAKBROOK TERRACE IL 60181

DEBORAH A SCHELKOPF
COUNTY TAX ID NO: 0513100001
531 CLOVERLANE DR
SYCAMORE IL 60178

DONALD A & MAURINE D WEBERPAL
COUNTY TAX ID NO: 0624400003
16681 SWANSON RD
SYCAMORE IL 60178

DONALD A & MAURINE D WEBERPAL
COUNTY TAX ID NO: 0625200005
16681 SWANSON RD
SYCAMORE IL 60178

DONALD W & AUDREY A KAALAAS
COUNTY TAX ID NO: 0129300006
1632 QUARRY RD
KIRKLAND IL 60146

ICC Docket No. 13-XXXX
ComEd Ex. D

WILLIAM J & RAELENE MCGUIRE
COUNTY TAX ID NO: 12-27-300-013
PO BOX 145
MONROE CENTER IL 61052

5 POINTS ROAD LLC
COUNTY TAX ID NO: 0514100016
360 N LARCH AVE
ELMHURST IL 60126

A L ANDERSON
COUNTY TAX ID NO: 0516200002
27707 GLIDDEN RD
CLARE IL 60111

AARON OTTE
COUNTY TAX ID NO: 0602300003
29342 MOOSE RANGE RD
GENOA IL 60135

ADELE M SWANSON
COUNTY TAX ID NO: 0625200007
25876 DARNELL RD
SYCAMORE IL 60178

ALAN G & GAYLE A VOLPP
COUNTY TAX ID NO: 0610300002
9N728 PELOW RD
HAMPSHIRE IL 60140

ALAN G & GAYLE A VOLPP
COUNTY TAX ID NO: 0610400005
9N728 PELOW RD
HAMPSHIRE IL 60140

BABSON FARMS CO
COUNTY TAX ID NO: 0513200002
PO BOX 596
MORRIS IL 60450

BARTELS FARMING CORP
COUNTY TAX ID NO: 0624100002
13127 STONE CREEK CT
HUNTLEY IL 60142

BERTH A GORENZ
COUNTY TAX ID NO: 0613400001
17573 LUKENS RD
SYCAMORE IL 60178

BERTH A GORENZ
COUNTY TAX ID NO: 0613400001
17573 LUKENS RD
SYCAMORE IL 60178

BUSEY TRUST CO
COUNTY TAX ID NO: 0132100001
2020 ABERDEEN CT
SYCAMORE IL 60178

CAROLYN SUTORIS
COUNTY TAX ID NO: 0607426002
4724 W BRYN MAWR AVE
CHICAGO IL 60646

CAROLYN SUTORIS
COUNTY TAX ID NO: 0608400007
4724 W BRYN MAWR AVE
CHICAGO IL 60646

CECIL E & CHARLENE WILLIS
COUNTY TAX ID NO: 0618200009
27398 BRICKVILLE RD
SYCAMORE IL 60178

CHARLES D & BETTY N PRIMM
COUNTY TAX ID NO: 0612400005
26765 IL ROUTE 23
SYCAMORE IL 60178

CHARLES E JR & LINDA F LEESE
COUNTY TAX ID NO: 0231300003
6447 BASE LINE RD
KIRKLAND IL 60146

CHARLES G BOND
COUNTY TAX ID NO: 0607476002
12799 WHIPPLE RD
SYCAMORE IL 60178

CHARLES N & MARY K SPRINGOB
COUNTY TAX ID NO: 0511300005
28163 5 POINTS RD
SYCAMORE IL 60178

CHARLES R & FLOY M LANE
COUNTY TAX ID NO: 0128300001
6556 LAURELWOOD DR
ROCKFORD IL 61108

CHERYL MURRAY
COUNTY TAX ID NO: 0230300003
31160 AULT RD
KINGSTON IL 60145

CHICAGO TITLE LAND TRUST CO
COUNTY TAX ID NO: 0612100008
171 N CLARK ST - STE 575
CHICAGO IL 60601

CHICAGO TITLE LAND TRUST CO
COUNTY TAX ID NO: 0612100009
171 N CLARK ST - STE 575
CHICAGO IL 60601

CHRISTOPHER L & TAMARA K THOMPSON
COUNTY TAX ID NO: 0126478012
1512 ELIZABETH CT
KIRKLAND IL 60146

COMMONWEALTH EDISON CO
ATTN: FRED SCHWER
COUNTY TAX ID NO: 0610200023
3 LINCOLN CENTER
OAKBROOK TERRACE IL 60181

DANIEL D & JENNIFER L HOFFMAN
COUNTY TAX ID NO: 0505400004
29470 JOHNSON RD
KINGSTON IL 60145

DANIEL D & JULIE FOLLMAN
COUNTY TAX ID NO: 0610400018
28367 MOOSE RANGE RD
SYCAMORE IL 60178

DANIEL L & MARY LOU PIAZZA
COUNTY TAX ID NO: 0607453007
12362 SUNSET DR
SYCAMORE IL 60178

DARIN T & EMMA L HAGEMEYER
COUNTY TAX ID NO: 0604400008
14985 STORY RD
GENOA IL 60135

DAVID W & CINDY S TAMRAZ
COUNTY TAX ID NO: 0126478013
1510 ELIZABETH CT
KIRKLAND IL 60146